

New Jersey Division on Civil Rights



Director's Orders Compendium

2004

CIVIL RIGHTS

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CEDOMIR MOKRIC v. KRIVAJA BEECHBROOK CORPORATION

Complainant alleged that his employer, a U.S. subsidiary of a corporation based in the former Yugoslavia, discriminated against him and terminated his employment based on his Serbian national origin. Complainant contended that after civil war broke out in former Yugoslavia, his employer systematically terminated almost all employees of Serbian origin, and treated non-Serbian employees more favorably than Serbs. The employer denied that national origin played any role in its decision to discharge Complainant, and asserted it discharged Complainant because he defaulted on loans he received from the employer. Following an administrative hearing, the administrative law judge (ALJ) dismissed the complaint,

concluding that Complainant failed to establish by competent, credible evidence that his employer discharged him because of his Serbian origin or that the employer treated non-Serbian employees more favorably than Serbian employees.

The Director found the ALJ's conclusions to be supported by the evidence in the record, and adopted the ALJ's recommended dismissal of the complaint.

DCR Docket No.:
EB62NB-36199-E**OAL Docket No.:**
CRT 1957-00**D.O. Issued:**
January 2, 2004**SUZANNE DEBRA CEBULA v. CATALINA MARKETING CORPORATION**

Complainant alleged that her employer violated the LAD by refusing to provide her with time off from work as a reasonable accommodation for her disability (a pregnancy induced back problem), and also violated the New Jersey Family Leave Act (NJFLA) in refusing to provide leave to care for her newborn child. Following an administrative hearing, the administrative law judge (ALJ) dismissed the complaint, concluding that the employer offered reasonable accommodations, and that Complainant was not entitled to NJFLA leave because she requested leave for her own medical condition.

The Director rejected the ALJ's conclusions and instead determined that the employer violated both the LAD and the NJFLA. Regarding the LAD violation, the Director concluded that neither the offer to permit

Complainant to work part time nor the suggestion that she reapply once she no longer needed an accommodation satisfied the employer's reasonable accommodation obligations. In addition, the Director concluded that the additional time off Complainant requested would not have imposed an undue hardship on the employer. Regarding the NJFLA violation, the Director concluded that the employer failed to properly notify Complainant of her right to take leave to care for her child, and that she was entitled to NJFLA leave for that purpose. The Director awarded Complainant back pay with interest and emotional distress damages, and assessed statutory penalties for each law violated. The Director also ordered Respondent to revise its written policies regarding family leave and reasonable accommodation to comply with New Jersey Law.

DCR Docket No.:
EB54WB-44933-E**OAL Docket No.:**
CRT 05588-02**D.O. Issued:**
January 26, 2004

MARLO LUTZ V. NJ DEPARTMENT OF CORRECTIONS, DIVISION OF PAROLE

Complainant alleged she was discriminated against due to her gender when Respondent refused to reasonably accommodate physical limitations caused by her pregnancy by transferring her to another position, even though Respondent had accommodated other similarly situated employees who had limitations not associated with pregnancy. As a parole officer, Complainant was required to receive annual retraining with firearms, a procedure known as re-qualification. Complainant became pregnant before she was scheduled to be re-qualified and advised her supervisor that, based on her physician's recommendation, she was not to fire a weapon. As a result, Complainant was forced to take a premature medical leave of absence, and it is this decision that she claimed constituted unlawful sex discrimination. At Complainant's request, the matter was transmitted to the Office of Administrative Law for determination as a contested case.

After a hearing, the Administrative Law Judge (ALJ) issued an initial decision in which he dismissed Complainant's claim. Based largely on his determination that Complainant's supervisor was a credible witness, the ALJ found that Complainant was offered several options, including a transfer to a position that did not require firearm re-qualification, and that Complainant rejected every one of those options. The Director conducted an independent review of the record and found sufficient evidence to adopt the ALJ's recommendation. Specifically, the Director found that Complainant failed to meet her burden of proving by a preponderance of the evidence that Respondent's reasons for not transferring her and placing her on a leave of absence were pretexts for pregnancy discrimination. In finding that Complainant was in fact offered a transfer, the Director gave proper deference to the ALJ's conclusion that Complainant's supervisor was a more credible witness than was Complainant.

DCR Docket No.:
EA02SG-45883-E**OAL Docket No.:**
CRT 4584-01**D.O. Issued:**
February 10, 2004**VIOLA PRESSLEY v. NJ TRENTON PSYCHIATRIC HOSPITAL, NJ DEPT. OF HUMAN SERVICES**

Complainant filed a verified complaint with the Division on Civil Rights, alleging that she received an official reprimand because of her race and as a reprisal for having previously filed an internal discrimination complaint with the Department of Human Services (DHS) in February 1999. Respondents asserted that Complainant was disciplined for non discriminatory reasons consistent with its policies regarding absenteeism. Before filing her discrimination complaint with the Division on Civil Rights, Complainant had appealed the reprimand and requested a departmental hearing with DHS, also alleging that she had been discriminated against because of her race. Complainant's reprimand was sustained by the departmental hearing officer, and the Merit System Board refused to review the hearing officer's decision. The Commissioner of the Department of Personnel (DOP) subsequently issued a final determination affirming the departmental hearing officer's decision. Meanwhile, the Division on Civil Rights case was transmitted to the Office of

Administrative Law (OAL) for a hearing. The Administrative Law Judge (ALJ) did not hear the claims on the merits, but rather summarily dismissed the complaint based on principles of issue preclusion and the entire controversy doctrine, concluding that the DHS departmental hearing and the subsequent DOP decision precluded Complainant from pursuing her LAD claim before the Division.

The Director reversed the ALJ's decision and remanded the matter to the OAL for a hearing on the merits. Significantly, the Director found that Complainant's LAD claim before the Division was not precluded by the prior DOP proceeding because of the differences in the quality or extensiveness of the procedures followed in the two forums. Because Complainant was not afforded a hearing before a tribunal with procedural protections comparable to those afforded to a Division complainant appearing before the OAL, the Director concluded that the prior DOP determination was not entitled to preclusive effect.

DCR Docket No.:
EI11JG-46328-E**OAL Docket No.:**
CRT 4869-01**D.O. Issued:**
March 1, 2004

CARL G. SULLIVAN v. EDUCATIONAL TESTING SERVICE

Complainant alleged that the Educational Testing Service (ETS) (Respondent) engaged in unlawful acts of reprisal against him in violation of the New Jersey Law Against Discrimination. Specifically, Complainant alleged that after he complained to Respondent's Employee Relations Director that Respondent denied him a promotion because of his race, he was subjected to disciplinary action and ultimately terminated in retaliation for complaining about discrimination. After the Division issued a Finding of Probable Cause and the matter was transmitted to the Office of Administrative Law as a contested case, a hearing was held on dates in 2001, 2002, and 2003. The Honorable Robert S. Miller, Administrative Law Judge (ALJ), issued his initial decision on December 24, 2003 concluding that Complainant failed to meet his burden of proving by a preponderance of the credible evidence that a discriminatory or retaliatory intent motivated Respondent to terminate him.

On May 10, 2004, the Director issued an order dismissing the complaint, concluding that Complainant did not show that Respondent terminated Complainant as an unlawful reprisal for complaining about discrimination. The record overwhelmingly demonstrated that Complainant had performance problems from the time he began working for ETS, and that these were documented before Complainant engaged in protected activity by filing his internal complaint of discrimination. Moreover, the ALJ who heard the case found that the witnesses who had supervised Complainant and attested to his poor work performance were much more credible than Complainant and his witnesses. Thus, based on the ALJ's express credibility determinations as well as the rest of the record, the Director adopted the ALJ's conclusion that Complainant was terminated for legitimate, non-retaliatory reasons (i.e., poor work performance), and not because he had complained about discrimination.

DCR Docket No.:
EL09JB-33086**OAL Docket No.:**
CRT 6631-97**D.O. Issued:**
May 10, 2004**DAVID R. GILLESPIE v. J.C.B.C., INC., dba COASTLINE RESTAURANT**

Complainant filed a verified complaint with the Division alleging that Respondent's "Ladies Night" promotion discriminated against him because of his sex in violation of the LAD. Complainant contended that the challenged policy admitted women to its restaurant free of charge and gave them discounts on drinks, but charged men, including Complainant, an admission fee of \$5.00 and normal drink prices. In its answer, Respondent asserted that no violation of the LAD occurred because its "Ladies Night" policy was not intended to discriminate against men, but rather had a legitimate commercial goal to increase patronage, and that the small price differentials at issue did not present the kind of harm the LAD was intended to address. After the matter was transmitted to the Office of Administrative Law

as a contested case, the Administrative Law Judge (ALJ) granted Complainant's motion for partial summary decision, finding Respondent liable for violating the LAD's proscription against gender discrimination.

The Director found that the ALJ's conclusion was compelled by the plain language of the LAD. He was also persuaded by several out of state court decisions which held that similar "Ladies Night" policies were in violation of their respective civil rights laws. Accordingly, the Director adopted the ALJ's decision and ordered that the matter be returned to the Office of Administrative Law for a hearing on the issue of the imposition of injunctive relief, the assessment of a penalty, and the award of damages and other appropriate relief.

DCR Docket No.:
PD12SB-02554**OAL Docket No.:**
CRT 2579-03**D.O. Issued:**
June 1, 2004

L.W. v. TOMS RIVER REGIONAL SCHOOLS BOARD OF EDUCATION

A junior high school student (L.W.) and his mother alleged that the board of education failed to take appropriate corrective action when the student was repeatedly subjected to bias-based harassment, including physical assault, by other students who perceived him to be homosexual. Although the school administrators warned and disciplined various students who were involved in the bias-based harassment, both new and repeat violators continued to harass and physically assault L.W. based on perceived homosexuality, even after the complaint was filed with DCR. Following an administrative hearing, the administrative law judge (ALJ) dismissed the complaint, concluding that the New Jersey Law Against Discrimination (LAD) does not provide a cause of action for bias-based student-on-student harassment in New Jersey's schools. The ALJ further concluded that even if the LAD prohibits such bias-based harassment, the school district was not be liable because its actions did not constitute "deliberate indifference" to known incidents of harassment.

The Director rejected the ALJ's legal conclusions and instead relied on prior

decisions of the New Jersey Supreme and Appellate Courts to conclude that bias-based student-on-student harassment will violate the LAD where it is severe or pervasive enough to make a reasonable student of the victim's protected class find the school environment hostile or abusive. The Director further concluded that a school district will be liable for such harassment when the school administration knew or should have known of the harassment and failed to take measures reasonably calculated, in light of the known circumstances, to stop it. Applying those standards to the evidence presented at the hearing, the Director concluded that the school district violated the LAD in permitting a bias-based hostile environment to deprive L.W. of the same educational opportunities afforded to other students.

The Director ordered the school district to undertake specific remedial actions, including revising its written anti-discrimination policies and strengthening its training, complaint processing and information-dissemination procedures. The Director also awarded both L.W. and his mother emotional distress damages, and assessed a statutory penalty.

DCR Docket No.:
PQ07IE-02596**OAL Docket No.:**
CRT 8535-01**D.O. Issued:**
July 26, 2004

JANE BONILLA v. GARDEN STATE REINSURANCE ASSOCIATION AND ABEL LEASING COMPANY, INC.

Complainant filed a verified complaint with the Division on Civil Rights charging Respondents with unlawful employment discrimination on the basis of race, and later filed an amended complaint to include the charge of unlawful employment discrimination on the basis of sex. Complainant contended that she was terminated by Respondents for conducting other business on company time, while an African American male employee who engaged in the same conduct was treated more favorably because of his race and gender. Following a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) issued an initial decision granting Respondents' motion for summary judgment and dismissing the complaint. The ALJ held Complainant failed to make a prima facie case of discrimination because she failed to proffer a scintilla of evidence to establish that she was otherwise performing at a level that met the reasonable expectations of the employer, and that the evidence indicated that Complainant's personal use of the telephone was far beyond any

such usage by the similarly situated African American male.

The Director adopted the ALJ's decision, but modified his analysis. The Director found that Complainant met the second prong of her prima facie claim because she was in Respondents' employ for two years, and Respondents did not offer any evidence that, prior to being discharged, Complainant failed to perform or under performed relative to her specific job functions. The Director concluded, however, that Respondents did in fact proffer a legitimate non-discriminatory reason for discharging Complainant, that is, she conducted other business while in Respondents' employ, and Complainant was unable to prove that this reason was a pre-text for discrimination. Complainant was unable to demonstrate that Respondents were aware that another employee was conducting outside business, or that the other employee was conducting such business to a degree approaching the level of outside business conducted by Complainant.

DCR Docket No.:
EB22RB-47418**OAL Docket No.:**
CRT 7442-03**D.O. Issued:**
August 19, 2004**NICHOLAS A. NOURAGAS v. WOODLAND CONDOMINIUM ASSOCIATION**

Complainant charged Respondent with unlawful reprisal in violation of the LAD. Specifically, Complainant alleged that Respondent terminated him because he objected to discriminatory remarks made by his supervisor to a coworker. Respondent articulated a legitimate nondiscriminatory basis for the alleged discrimination, claiming Complainant established a history of tardiness and poor work performance. Following a hearing at the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) issued an initial decision dismissing Complainant's claim, observing that Complainant failed to meet his burden to prove the racial remark was uttered, and that he was terminated because he defended a protected person from this remark. The ALJ found that Complainant's proofs were thin,

uncorroborated, and sufficiently refuted, and that Respondent's witnesses provided a more reliable and trustworthy summary of the events.

The Director found that the ALJ's findings were supported by sufficient, competent and credible evidence, including the finding that his supervisor did not utter racially offensive remarks as alleged. Moreover, based on his independent review of the record, the Director also found that there was no evidence showing that Complainant ever objected to racial slurs or any other conduct prohibited by the LAD. Therefore, the Director adopted the ALJ's conclusion that Complainant failed to prove that Respondent terminated him as a reprisal for objecting to racially discriminatory remarks made by his supervisor.

DCR Docket No.:
EA12JB-42735**OAL Docket No.:**
CRT 00546-03S**D.O. Issued:**
November 3, 2004